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UNCLAS SECTION 01 OF 03 SANTO DOMINGO 002579

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SUBJECT: SANTO DOMINGO 2005 IPR PROJECT PROPOSAL FOR
TRAINING AND TECHNICAL ASSISTANCE

REF: STATE 48295

1. Santo Domingo requests USD 6,500 funding to bring two IPR enforcement experts to the Dominican Republic for separate two-day training sessions for enforcement authorities charged with combating television broadcast piracy and pharmaceutical patent piracy. These experts would also be used for one day each of public affairs programming to raise public awareness of the benefits and requirements of intellectual property rights. Detail responding to reftel guidance and a breakdown of costs follow, in format prescribed reftel.

(begin text)

Part I

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1. Economic Impact on U.S. Interests. According to IIPA, 2005 Special 301 recommendations, piracy in the Dominican Republic accounted for trade losses in 2004 of USD 2 million in cinema films, USD 10.3 million in music, USD 3 million in software and USD 1 million in books. The U.S.-Dominican Republic-Central American Free Trade Agreement (CAFTA) signed in 2004 is awaiting ratification. If implemented, the agreement will create increased opportunities for trade, but U.S. exporters of intellectual property will benefit fully only if IPR protection is improved.

2. Crime and Security Considerations. Politically influential perpetrators of IPR-related crimes are widely viewed by the public as immune to punishment for their actions. Channel 5 (Telemicro) regularly broadcasts stolen movies and has done so for years. The owner of the station has donated heavily to political campaigns, including that of the current president. According to accounts of local IPR attorneys, this individual has used threats and other intimidating tactics to block individuals who want to limit his illegal activity. It is reported that he asserts that he can do as he pleases because he is untouchable by the authorities. A Dominican court found the station guilty of broadcast piracy for the first time in a case in late 2004. The station was fined a relatively minor amount and one of its managers sentenced to a short jail sentence. Both verdicts are still under appeal.

3. Relevance to Other U.S. Objectives. CAFTA contains specific requirements for the Dominican Republic to strengthen its IPR protection regime. U.S. assistance to help the country achieve CAFTA requirements would directly affect the success of CAFTA. The first priority of Embassy Santo Domingo's Mission Performance Plan is the strengthening of law enforcement and judicial systems.

4. Political Will. When Leonel Fernandez took office in August, 2004 he appointed individuals of integrity to the principal law enforcement positions in his cabinet and in the security forces. There has been progress both in the courts and in administrative actions since that time. Just last week, for instance, the District Attorney in the country's second city of Santiago raided a television station that was regularly and flagrantly broadcasting pirated material nationwide, confiscated files and equipment and put the station off the air. The head of the Industrial Property office told EcoPol Counselor this week that he is committed to overhauling the country's neglected patent system, but that his office needs training to do so. He has recently consulted with other Latin American patent offices and is seeking contacts and guidance from United States authorities. Since January, 2005 the Fernandez administration has been preparing and submitting quarterly reports on actions to enforce laws on broadcast piracy, as agreed in a bilateral side letter to the August 2004 CAFTA agreement.

5. Capacity to Achieve Measurable Progress. There are clear targets for enforcement of piracy. Three other major broadcasters and many more minor television stations that pirate material. Working to stop each one of the remaining stations from continuing illegal practices would provide measurable results. Application of training on piracy of pharmaceutical products could be verified by administrative actions undertaken by the Patent Office in response to unjustified requests for "compulsory licensing" of patented

pharmaceuticals and enforcement actions to remove illegal medicines from the market.

Part II. Components of an Effective IPR Regime

1. Legal Framework. U.S. authorities confirm that the existing legal system provides sufficient tools for enforcement. CAFTA commitments require strengthening the Dominican IPR protection regime to conform with, and in many areas to exceed WTO norms. This would include criminalizing end-user piracy, which would provide strong deterrence against piracy and counterfeiting. CAFTA will require the Dominican Republic to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The CAFTA requires measures authorizing both statutory and actual damages for copyright infringement and for trademark piracy.

2. Enforcement Capacity. Despite strong patent and copyright laws passed in 2000, enforcement is still lacking. We want to help the Dominicans strengthen the basic structure already in place. The change of governments in mid-August, 2004 led to major turnover in government personnel, so that many new employees do not have adequate grounding in principals of intellectual property enforcement.

3. Border controls. Piracy is essential a question of domestically produced counterfeits of illegal public broadcast of cinema films licensed only for home viewing, legitimately available for purchase locally. Although border controls in general are relatively ineffective, this fact has limited effect on the problem.

4. Government-Industry Cooperation: Under the new administration this area shows potential for improvement. Legitimate IPR users constitute a lobby favorable to enforcement. These include, for example, the many operators of franchised video rental operations, members of an industry association, and the association of representatives and manufacturers of licensed pharmaceutical products.

5. Effective International Cooperation. The Dominican Republic has ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, but the World Intellectual Property Organization as treaty registrar has not recorded the deposit by the Dominican Republic of its instruments of ratification for these two treaties. The director of the Industrial Property Office participates in international meetings at WIPO.

6. Public Awareness. There is low public consciousness of IPR issues of piracy. Seminars will offer the Embassy and the Dominican authorities opportunities to publicize the requirements and the benefits of IPR.

7. Senior-level Engagement by Public Officials: The Secretary of Industry and Commerce and the Director of the

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Patent Office are cooperating to improve IPR protection here.

The Attorney General has appointed a Deputy Attorney General with responsibility for intellectual property issues.

Part III Project Criteria and Metrics

1. Targeted to U.S. Priorities. As noted, improvement of law enforcement and judicial systems is the first priority of the Mission Performance Plan. The project proposes to focus on two issues: television broadcast piracy and pharmaceutical patent piracy. Television piracy affects U.S. cinema producers almost exclusively. As mentioned above, fighting television broadcast piracy is a specific commitment under CAFTA, one of the United States major initiatives in the region. Similarly, preventing patent abuse of pharmaceuticals would protect many U.S. companies and improve the environment for business and investment. U.S. support of IPR protection in these two areas would be welcomed by U.S. industry, which has praised the Embassy for its efforts in these areas to date.

2. Strong Support of Host Government. As described above, the Embassy has established collaborative working relations with the Secretary of Industry and Commerce, the heads of the offices for industrial property and for copyright, and with the Attorney General and his staff. Our project is targeted at those individuals.

3. Addresses Key Gap. As noted above, the Dominican government agencies charged with protecting patents and copyrights are inexperienced but willing and would benefit from targeted training. We propose to offer training for enforcement of copyright protection related to television broadcasting piracy and patent protection related to pharmaceuticals.

14. Capacity for near term, measurable results. By targeting those offices directly involved with patent and copyright protection, we expect that the benefits will be near term. In the case of combating television piracy, we will measure success in terms of actions undertaken against television stations that commit piracy and the percentage level of video piracy observed. In that of pharmaceuticals, we will measure it by the number of enforcement actions, the outcomes of petitions for "compulsory licenses," and reduction in the number of pirated U.S. products available in the market.

15. Strong Project Oversight/Accountability. Our project calls for bringing two experts to the Dominican Republic to provide training and guidance to targeted audiences. The expenses involved are those required for their travel, honoraria, hotel and per diem. The Embassy's Economic and Political Section will be responsible for all project oversight and accountability.

Proposal

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Embassy Santo Domingo requests USD 6,500 to bring two IPR enforcement experts to the Dominican Republic, separately, for 2 days each:

One copyright/IPR enforcement expert to provide training related to investigating broadcast piracy and to participate in public affairs programming concerning copyright of cinematic productions.

Travel: USD 1,000 est.

Honorarium: 3 days x USD 500/day = USD1,500

Hotel/Per diem: 3 days x USD 250/day = USD 750

Total: \$3,250

One expert on pharmaceuticals and international IPR instruments (WTO TRIPS, WIPO, etc.) to provide training related to patent protection, international legal provisions, compulsory licensing, and investigation of pharmaceutical piracy

Travel: USD 1,000 est.

Honorarium: 3days x USD 500/day = USD 1,500

Hotel/Per diem: 3 days x USD 250/day = USD 750

Total: USD 3,250

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